

2.1	Subject Matter Jurisdiction and Jurisdiction Over the Juvenile .....	16
2.2	Informal Jurisdiction and Diversion .....	18
2.3	Jurisdiction Over Status Offenders.....	18
2.4	Concurrent Jurisdiction Over 17-Year-Old “Wayward Minors” .....	20
2.5	Jurisdiction of Juvenile Delinquency Cases .....	21
2.6	“Automatic Waiver” of Family Division Jurisdiction.....	22
2.7	“Traditional Waiver” of Family Division Jurisdiction.....	25
2.8	Designated Cases in the Family Division.....	26
	A. Prosecutor-Designated Cases .....	26
	B. Court-Designated Cases .....	27
<b>2.9</b>	<b>Table Summarizing Courts With Jurisdiction of Law Violations by Juveniles .....</b>	<b>28</b>
2.10	Jurisdiction Over Juveniles Charged With Criminal Violations of the Michigan Vehicle Code.....	29
2.11	Jurisdiction of Civil Infractions Committed by Juveniles.....	31
2.12	Jurisdiction of Contempt Proceedings.....	32
2.13	Jurisdiction and Authority Over Adults .....	33
2.14	Transfer of Jurisdiction to Family Division Because Offender Was Under 17 at Time of Offense .....	34
2.15	Transfer of Jurisdiction in Delinquency Cases From County Where Offense Occurred to County Where Juvenile Resides.....	35
2.16	Transfer of Designated Cases After Trial for Entry of a Juvenile Disposition .....	37
2.17	Transfer of Jurisdiction in Status Offense and “Wayward Minor” Cases Involving Indian Children.....	37
	A. Determining the Applicability of the Indian Child Welfare Act and MCR 3.980 in a Specific Case .....	38
	B. Tribal Notification Requirements .....	38
	C. Mandatory Transfer of Case to Tribal Court.....	39
	D. Notice of Proceedings to Parent and Tribe or Secretary of Interior .....	39
	E. Non-Mandatory Transfer of Case to Tribal Court.....	39
2.18	Venue and Change of Venue in Delinquency Cases .....	40
2.19	Procedures for Handling Cases When Juvenile Is Subject to Prior or Continuing Jurisdiction of Another Court in Michigan .....	40
2.20	Procedures for Handling Cases Under the Interstate Compact on Juveniles .....	42
	A. Procedures for the Involuntary Return of Runaways, Absconders, and Escapees.....	43
	B. Voluntary Consent to Return to Home State.....	45
	C. Mandatory Authorization of Return to Juvenile’s Home State.....	46
	D. “Extradition” of Juveniles Charged With Criminal Offenses.....	46

## In this chapter. . .

This chapter discusses courts’ authority to conduct all of the proceedings involving juveniles covered in this benchbook except minor personal

protection order (PPO) proceedings. Minor PPO proceedings are discussed in Chapter 15. This chapter begins by distinguishing subject matter jurisdiction, which deals with a court's authority to hear a certain type of case, from jurisdiction over a juvenile, which a court may exercise after a plea or trial. This chapter also includes provisions under which a case may be transferred to a different court because of the juvenile's age or residence, or because the juvenile is a member or eligible for membership in an Indian tribe. Finally, this chapter discusses the procedures required when a juvenile is subject to the jurisdiction of another Michigan court, or where the juvenile is subject to the jurisdiction of a Michigan court but has run away, absconded, or escaped to another state.

Related topics are discussed elsewhere in this benchbook. For a discussion of the extension of jurisdiction, see Section 14.1. Placement of juveniles in other states is discussed in Section 10.9(G).

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and "traditional waiver" proceedings, and to Subchapter 6.900, which govern "automatic waiver" proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998).

## 2.1 Subject Matter Jurisdiction and Jurisdiction Over the Juvenile

**Distinguishing subject matter and personal jurisdiction.** A court's assumption of subject matter jurisdiction should be distinguished from the court's exercise of jurisdiction over the juvenile. Subject matter jurisdiction is a court's authority to exercise judicial power over a particular class of cases (e.g., delinquency cases). Jurisdiction over a juvenile may be exercised only after the court makes a determination regarding the specific facts of a case. *In re AMB*, 248 Mich App 144, 166 (2001). Jurisdiction over the juvenile, "personal jurisdiction," may be established only after parties have received proper notice and the finder of fact determines that the juvenile has committed a delinquent act or status offense, has violated a personal protection order (PPO), or has committed a civil infraction. In *In re Hatcher*, 443 Mich 426, 437 (1993), the Michigan Supreme Court found that subject matter jurisdiction is established if

“the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous. The valid exercise of the [Family Division’s] statutory jurisdiction is established by the contents of the petition after the [Family Division] judge or referee has found probable cause to believe that the allegations contained within the petitions are true.”\*

\*This probable cause determination occurs at a preliminary inquiry or a preliminary hearing. See Sections 4.2 and 5.12.

On the other hand, a determination that the Family Division has jurisdiction over a juvenile is made following a plea or trial. See MCR 3.903(A)(26) (“[t]rial’ means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court”), and MCL 712A.18(1) (if a court finds that a juvenile is within its jurisdiction under the Juvenile Code, the court may enter a dispositional order).\* In addition, once a court establishes personal jurisdiction over a juvenile, it has authority to enter orders concerning the juvenile’s parents. See Section 2.13, below, for a discussion of this authority.

\*Pleas are discussed in Chapter 8; trials are discussed in Chapter 9.

**Subject matter jurisdiction.** Prior to January 1, 1998, the juvenile division of the probate court had “original jurisdiction in all cases of juvenile delinquents . . . , except as otherwise provided by law.” Const 1963, art 6, § 15. Effective January 1, 1998, the newly created Family Division of the Circuit Court (“Family Division”) was assigned jurisdiction over proceedings involving juveniles. MCL 600.601(3), MCL 600.1001, and MCL 712A.1(c). A “juvenile” is defined in MCR 3.903(B)(2) as “a minor alleged or found to be within the jurisdiction of the court for having committed an offense.” “Minor” means a person under the age of 18, and may include a person of age 18 or older over whom the juvenile court has continuing jurisdiction pursuant to MCL 712A.2a.” MCR 3.903(A)(15).\*

\*See Section 14.1 for a discussion of “continuing jurisdiction” over a juvenile.

**Note:** MCL 600.1009 states that a reference to the former juvenile division of the probate court in any statute shall be construed as a reference to the Family Division of Circuit Court. See also MCR 3.903(A)(4) (“court” means Family Division of the Circuit Court when used in court rules).

MCL 600.1021(1) provides that the Family Division has “sole and exclusive jurisdiction” over the following types of cases discussed in this benchbook:

- cases under the Juvenile Code, including delinquency, status offense, and designated cases, MCL 600.1021(1)(e); and
- “cases involving personal protection orders under [MCL 600.2950 and 600.2950a],” MCL 600.1021(1)(k).\*

\*These cases are discussed in Chapter 15.

The Family Division also has ancillary jurisdiction over cases involving mentally ill or developmentally disabled persons under the Mental Health Code, MCL 330.1001 et seq. MCL 600.1021(2)(b).

MCR 3.903(A)(1) defines “case” as follows:

“‘Case’ means an action initiated in the family division of circuit court by:

(a) submission of an original complaint, petition, or citation;

(b) acceptance of transfer of an action from another court or tribunal; or

(c) filing or registration of a foreign judgment or order.”

## 2.2 Informal Jurisdiction and Diversion

\*See Chapter 4 for a detailed explanation of diversion and informal procedures.

The Family Division may determine that services should be offered to a juvenile without the filing or authorization of a formal petition. The Family Division has the authority to establish or assist in the development of programs within the county to prevent delinquency and to provide services to act upon reports submitted to the court related to the behavior of juveniles who do not require formal court jurisdiction but otherwise fall within the provisions of MCL 712A.2(a) (criminal and status offenses). These services must be voluntarily accepted by the juvenile and his or her parents, guardian, or custodian. MCL 712A.2(e). Furthermore, the court may use informal procedures only if the court complies with the requirements of the Juvenile Diversion Act. MCL 712A.11(7).\*

## 2.3 Jurisdiction Over Status Offenders

\*See Sections 2.17 (transfer), 3.3(G) (emergency removal from home), and 5.15 (placement) for special requirements if the status offender is an Indian child.

“Status offender” is the term commonly used to refer to juveniles who are alleged to fall within the exclusive original jurisdiction of the Family Division pursuant to MCL 712A.2(a)(2)–(4).\*

Status offenders are juveniles under 17 years of age who are found within the county and who meet any of the following requirements:

### “Runaways”

“(2) The juvenile has deserted his or her home without sufficient cause and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile’s parent, guardian, or custodian have exhausted or refused family counseling.”

## “Incorrigibles”

“(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.”

In *In re Weiss*, 224 Mich App 37, 39 (1997), the juvenile’s father testified at trial that the juvenile was caught smoking marijuana by police, was suspended for bringing a bow and arrow to school, and was “arrested” for committing retail fraud. On appeal, the juvenile argued that he should have been charged with criminal violations and “truancy” rather than “incorrigibility” under MCL 712A.2(a)(3). The Court of Appeals found that “the concept of disobeying one’s parents’ commands encompasses getting suspended from school or performing illegal acts.” *Id.* at 41. Although the prosecuting attorney could have charged the juvenile with criminal violations, he or she chose to charge general disobedience under the “incorrigibility” provision, and the court properly considered the criminal violations in deciding whether the juvenile had committed this status offense. *Id.*

## “Truants”

“(4) The juvenile wilfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile’s parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile’s educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, ‘learning program’ means an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.”

The “compulsory education statute,” MCL 380.1561, under which a child is legally required to attend school subject to certain exceptions enumerated in the statute,\* may be applied to children through this provision of the Juvenile Code. *In re Marable*, 90 Mich App 7, 10–11 (1979), and *Flint Bd of Educ v Williams*, 88 Mich App 8, 17 (1979). In the case of a child in a special education program who allegedly repeatedly violates school rules, a school board may not petition the Family Division under MCL 712A.2(a)(4)

\*One of the exceptions to compulsory school attendance is “home schooling.” See MCL 380.1561(3)(f) and (4).

until administrative proceedings pursuant to MCL 380.1701 et seq. have terminated. *Flint Bd of Educ, supra.* \*

MCL 712A.11(4) states that “[i]f the juvenile attains his or her seventeenth birthday after the filing of the petition, the court’s jurisdiction shall continue beyond the juvenile’s seventeenth birthday and the court may hear and dispose of the petition under [the Juvenile Code].”

A juvenile is “found within the county” where the offense occurred or where the juvenile is physically present at the time the petition is filed. MCR 3.926(A).

## **2.4 Concurrent Jurisdiction Over 17-Year-Old “Wayward Minors”**

MCL 764.27 states in part:

“If during the pendency of a criminal case against a child in a court of record other than the family division of circuit court it is determined that the child is 17 years of age, the court, if the court finds that any of the conditions exist as outlined in [MCL 712A.2(d)], upon motion of the prosecuting attorney, the child, or his or her representative, may transfer the case together with all papers connected with the case to the family division of circuit court of the county where the offense is alleged to have been committed.”

MCL 712A.2(d), in turn, provides that the Family Division has concurrent jurisdiction with the court conducting the criminal proceedings concerning a 17 year old if one of several conditions exists. If the Family Division finds on the record that voluntary services have been exhausted or refused, the court has concurrent jurisdiction in proceedings concerning juveniles 17 years of age who are found within the county and meet any of the following requirements:

- (1) The juvenile is “[r]epeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.”
- (2) The juvenile “[r]epeatedly associat[es] with criminal, dissolute, or disorderly persons.”
- (3) The juvenile is “[f]ound of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.”
- (4) The juvenile “[r]epeatedly associat[es] with thieves, prostitutes, pimps, or procurers.”

(5) The juvenile is “[w]ilfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.” MCL 712A.2(d)(1)–(5).

See, generally, *People v Sabo*, 65 Mich App 573, 578–79 (1975), where the Court of Appeals discussed the interaction between these statutes.

**Note:** The “wayward minors” provisions of the jurisdiction statute are rarely, if ever, used by the trial courts in Michigan. Consequently, there will be no further discussion of these provisions in this benchbook. Note, however, that a case involving a “wayward minor” who is also Native American may be transferred to tribal court under certain circumstances. See Section 2.17, below.

## 2.5 Jurisdiction of Juvenile Delinquency Cases

MCL 712A.2(a)(1) sets forth the Family Division’s “exclusive original jurisdiction” over cases in which a juvenile is accused of violating a criminal law or ordinance. This statute also contains an exception allowing the prosecuting attorney to vest jurisdiction in the court of general criminal jurisdiction if a “specified juvenile violation” is alleged and the juvenile is at least 14 years of age.\* MCL 712A.2(a)(1) states in part that the Family Division has the following jurisdiction:

“(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

“(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. . . . The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant.”

A juvenile is “found within the county” where the offense occurred or where the juvenile is physically present at the time a petition is filed. MCR 3.926(A).\*

MCL 712A.11(4) states that “[i]f the juvenile attains his or her seventeenth birthday after the filing of the petition, the court’s jurisdiction shall continue beyond the juvenile’s seventeenth birthday and the court may hear and dispose of the petition under [the Juvenile Code].”

\*This procedure is described in Section 2.6, immediately below.

\*See Section 2.15 (transfer of case to juvenile’s county of residence).

Juveniles do not have a constitutional right to be treated differently than adult offenders when they are charged with committing what would be a criminal offense if committed by an adult. *People v Hana*, 443 Mich 202, 220 (1993), *People v Conat*, 238 Mich App 134, 159 (1999), and *People v Parrish*, 216 Mich App 178, 182 (1996). Thus, the Legislature has provided several procedural mechanisms whereby juveniles may be subjected to adult criminal procedures and penalties. These are discussed in the succeeding sections.

## 2.6 “Automatic Waiver” of Family Division Jurisdiction

\*See Chapters 20–22 for a detailed discussion of “automatic waiver” cases.

Under MCL 712A.2(a)(1), the Family Division has jurisdiction over a juvenile 14 years of age or older who is charged with a “specified juvenile violation” only if the prosecuting attorney files a petition in the Family Division instead of authorizing a complaint and warrant and proceeding in district court.\* MCL 600.606(1) states that “[t]he circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 17 years of age.”

**Note:** Although MCL 600.606(1) assigns jurisdiction to “circuit court” and the Family Division is within the circuit court, “automatic waiver” cases are heard in the Criminal Division of Circuit Court. See MCL 600.601(3) and 600.1021(1)(e), limiting the Family Division’s jurisdiction to cases under the Juvenile Code, MCL 712A.1 et seq.

**Specified juvenile violations.** MCL 712A.2(a)(1)(A)–(I), MCL 600.606(2)(a)–(i), and MCL 764.1f(2)(a)–(i) list the specified juvenile violations. The “specified juvenile violations” are as follows:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to maim, MCL 750.86;
- assault with intent to rob while armed, MCL 750.89;
- attempted murder, MCL 750.91;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- armed robbery, MCL 750.529;



- carjacking, MCL 750.529a;
- bank, safe, or vault robbery, MCL 750.531;
- assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
- escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency or a county juvenile agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency or a county juvenile agency, MCL 750.186a;
- manufacture, sale, or delivery, MCL 333.7401(2)(a)(i), or possession, MCL 333.7403(2)(a)(i), of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine;\*
- any attempt, MCL 750.92, to commit any of the above crimes;
- any solicitation, MCL 750.157b, to commit any of the above crimes;
- any conspiracy, MCL 750.157a, to commit any of the above crimes.

“Dangerous weapon,” as used in the context of a “specified juvenile violation,” means one of the following:

- a loaded or unloaded firearm, whether operable or inoperable;
- a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;
- an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon; and
- an object or device that is used or fashioned in a manner to lead a person to believe the object or device is a weapon.

MCL 712A.2(a)(1)(B), MCL 600.606(2)(b), and MCL 764.1f(2)(b).

\*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401 (2)(a)(i) and MCL 333.7403 (2)(a)(i) to prohibit manufacture, sale, delivery, possession with intent to deliver, or possession of 1000 grams or more of a Schedule 1 or 2 narcotic or cocaine. See Section 23.4 for further discussion.

\*See Section 3.10 for discussion of pretrial detention of juveniles in “automatic waiver” cases.

**Procedure.** MCL 764.1f(1) sets forth the required procedure for divesting the Family Division of jurisdiction and vesting jurisdiction in the Criminal Division when a “specified juvenile violation” is alleged.\* That provision states as follows:

“If the prosecuting attorney has reason to believe that a juvenile 14 years of age or older but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.”

If a district court judge determines that probable cause exists that a “specified juvenile violation” was committed and that the juvenile committed it, the juvenile must be bound over to the Criminal Division, which then has jurisdiction over the juvenile. MCL 766.13. Note that the definition of “specified juvenile violation” includes:

- any attempt, solicitation, or conspiracy to commit one of the “specified juvenile violations”;
- any lesser-included offense arising out of the same transaction as a “specified juvenile violation” if the juvenile is also charged with a “specified juvenile violation”; and
- any other offense arising out of the same transaction if the juvenile is also charged with a “specified juvenile violation.”

MCL 712A.2(a)(1)(E)–(I), MCL 600.606(2)(e)–(i), and MCL 764.1f(2)(e)–(i).

**Transfer of case “back” to Family Division.** MCL 766.14(2) and MCR 6.911(B) require the magistrate to transfer the case “back” to the Family Division if, at the conclusion of the preliminary examination, the magistrate finds that a “specified juvenile violation” did not occur or that there is not probable cause to believe that the juvenile committed a “specified juvenile violation,” but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense.

As noted above, the definition of “specified juvenile violation” includes lesser-included offenses and other offenses arising out of the same transaction as a “specified juvenile violation” if the juvenile is *charged* with a “specified juvenile violation.” This suggests that the district court may bind the juvenile over for trial if it finds probable cause that the juvenile committed a lesser-included or other offense rather than the charged enumerated offense. However, the district court may not bind the juvenile over for trial on these other offenses unless it also finds probable cause that the juvenile committed an enumerated “specified juvenile violation.” See *People v Veling*, 443 Mich 23, 31, 42–43 (1993), where the Michigan Supreme Court held that the circuit court gains jurisdiction over non-

enumerated offenses only if the juvenile is also *charged in circuit court* with an enumerated offense, and the circuit court does not lose jurisdiction to sentence the juvenile if the juvenile is convicted of a lesser-included offense or other offense that is not an enumerated offense.

On the other hand, the district court may bind the juvenile over to circuit court if it finds probable cause that the juvenile committed a “specified juvenile violation” other than the offense charged in the district court complaint. For example, if the juvenile is charged with first-degree murder, and the district court finds probable cause that the juvenile committed second-degree murder, the juvenile could be bound over for trial since second-degree murder is also an enumerated “specified juvenile violation.”

MCR 3.939(A) states that the Family Division must hear and dispose of a case transferred pursuant to MCL 766.14 in the same manner as if the case had commenced in the Family Division. A petition that has been approved by the prosecuting attorney must be submitted to the court. Pursuant to MCR 3.939(B), the Family Division “may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the probable cause requirement of MCR 3.935(D)(1).”\*

\*See Section 5.12 for an explanation of the probable cause finding necessary for detention.

Transfer of the case to the Family Division does not prevent the Family Division from waiving jurisdiction using the “traditional waiver” procedures under MCL 712A.4. MCL 766.14(3).

## 2.7 “Traditional Waiver” of Family Division Jurisdiction

MCL 712A.4 sets forth the procedures for “traditional” or judicial waiver of the Family Division’s jurisdiction over juveniles who have committed offenses that if committed by adults would be felonies.\*

\*See Chapter 16.

“If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.”

MCL 712A.4(3)–(4) and MCR 3.950(D) explain that the waiver proceeding consists of two phases. A first-phase hearing must be held to determine whether there is probable cause that an offense has been committed that if committed by an adult would be a felony, and that there is probable cause that the juvenile who is 14 years of age or older committed the offense. MCL 712A.4(3) and MCR 3.950(D)(1).\* The court may also find the requisite probable cause at a preliminary hearing, provided that only legally admissible evidence was used to establish probable cause. MCR

\*See Section 3.11 for a discussion of pretrial detention in “traditional waiver” cases.

3.950(D)(1)(c)(i). If the court finds the requisite probable cause, or if the juvenile waives the first-phase hearing, a second-phase hearing must be held to determine whether the interests of the juvenile and the public would best be served by granting the prosecutor’s motion for waiver. MCL 712A.4(4) and MCR 3.950(D)(2).

\*For further discussion of this issue, see Section 16.14.

However, MCR 3.950(D)(2) and MCL 712A.4(5) provide that if the juvenile has previously been subject to the jurisdiction of the circuit court under MCL 712A.4 (“traditional waiver”) or MCL 600.606 (“automatic waiver”), then the Family Division must waive jurisdiction to the court of general criminal jurisdiction without holding the second-phase hearing.\*

## 2.8 Designated Cases in the Family Division

\*See Chapters 17–19 and 22. Pretrial detention of juveniles in designated cases is discussed in Section 3.9.

According to MCR 3.903(A)(6), a “designated proceeding” means a proceeding in which the prosecutor has designated, or has asked the court to designate, the case for trial in the Family Division in the same manner as an adult.\* A juvenile tried “in the same manner as an adult” is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction. MCL 712A.2d(3) and MCR 3.903(D)(9). The court’s acceptance of a plea of guilty or *nolo contendere* or a verdict of guilty results in the entry of a judgment of conviction. The conviction has the same effect and creates the same liabilities as if it had been obtained in a court of general criminal jurisdiction. MCL 712A.2d(7).

\*See SCAO Form JC 04, which may be used to designate a case or request that the court designate a case.

MCR 3.903(D)(3) defines a designated case as either a prosecutor-designated case or a court-designated case. Only the prosecuting attorney may designate a case or amend a petition to designate a case in which the petition alleges a “specified juvenile violation,” and only the prosecuting attorney may request the court to designate a case in which the petition alleges an offense other than a “specified juvenile violation.” MCR 3.914(D). Thus, although the prosecuting attorney initiates both types of designated proceedings, the court decides whether to designate a case where an offense other than a “specified juvenile violation is alleged.” See also MCL 712A.2d(1) (amended petition may be filed only by leave of court).\*

### A. Prosecutor-Designated Cases

\*See Section 17.1(A) for a list of specified juvenile violations.

In a “prosecutor-designated case,” the prosecuting attorney has endorsed a petition charging a juvenile with a “specified juvenile violation” with the designation that the juvenile is to be criminally tried in the Family Division in the same manner as an adult. MCR 3.903(D)(6), MCR 3.903(D)(8)(a)–(r), and MCL 712A.2d(9)(a)–(i).\*

## B. Court-Designated Cases

In a “court-designated case,” the court, pursuant to a request by the prosecutor, has decided according to factors set forth in MCL 712A.2d(2) and MCR 3.952(C)(3) that the juvenile is to be criminally tried in the Family Division in the same manner as an adult for an offense other than a specified juvenile violation. MCR 3.903(D)(2). The court may designate a case involving any criminal offense, felony or misdemeanor, for criminal trial. A “designation hearing”<sup>\*</sup> must be held on the prosecutor’s request for case designation. MCR 3.903(D)(4) and MCL 712A.2d(2). MCL 712A.2d(2)(a)–(f) contain the standard to be used to determine whether to designate the case:

<sup>\*</sup>See Sections 17.10–17.13 for the requirements for designation hearings.

“The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court shall consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior delinquency record than to the other factors:

“(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

“(b) The juvenile’s culpability in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

“(c) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

“(d) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.

“(e) The adequacy of the punishment or programming available in the juvenile justice system.

“(f) The dispositional options available for the juvenile.

MCR 3.952(C)(3)(a)–(f) contain the same factors.

## 2.9 Table Summarizing Courts With Jurisdiction of Law Violations by Juveniles

\*For a discussion of jurisdiction and authority where a juvenile is cited for a civil infraction, see Section 2.11, below.

As noted above in Section 2.5, the Family Division has “exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age” who is charged with violating any municipal ordinance or state or federal law. MCL 712A.2(a)(1).<sup>\*</sup> However, the Family Division may be divested of jurisdiction over a criminal offense through “automatic” or “traditional waiver” procedures. The Family Division may also conduct criminal proceedings concerning a juvenile whose case has been designated for criminal trial. The table below summarizes these various possibilities when a juvenile is charged with a law violation and provides cross-references to sections of this benchbook containing more detailed discussion.

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Initiation of Proceedings	Cross-References
<b>Delinquency Case</b>	Family Division of Circuit Court	Violation of municipal ordinance or state or federal law	Prosecutor files petition in Family Division of Circuit Court	<b>See Section 2.5 and Chapters 4–14</b>
<b>“Traditional Waiver”</b>	Criminal Division of Circuit Court, after waiver by Family Division of Circuit Court	Felony by 14–16 year old	Prosecutor files motion for waiver in Family Division of Circuit Court	<b>See Section 2.7 and Chapter 16</b>
<b>Designated Case Proceeding</b>	Family Division of Circuit Court	Felony or misdemeanor by juvenile under 17 years old	Prosecutor may designate case if specified juvenile violation alleged; prosecutor must request designation if other offense alleged	<b>See Section 2.8 and Chapters 17–19, 22, and 23</b>

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Initiation of Proceedings	Cross-References
“Automatic Waiver”	Criminal Division of Circuit Court, after bindover from district court	Specified juvenile violation by 14–16 year old	Prosecutor files complaint and warrant in district court	See Section 2.6 and Chapters 20–23

## 2.10 Jurisdiction Over Juveniles Charged With Criminal Violations of the Michigan Vehicle Code

The Family Division has “exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age” who is charged with violating any municipal ordinance or state or federal law. MCL 712A.2(a)(1). Under MCR 3.903(B)(3), an “offense by a juvenile” includes an act that violates a criminal statute, a criminal ordinance, or a traffic law.

**Procedure.** The Juvenile Code provides special procedures that apply when a juvenile is charged with a violation of the Michigan Vehicle Code\* or an ordinance substantially corresponding to such a violation. MCL 712A.2b states:

“When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, . . . or a provision of an ordinance substantially corresponding to any provision of [the Michigan Vehicle Code], the following procedure applies, *any other provision of this chapter notwithstanding*. . . .” (Emphasis added.)

The procedures listed in MCL 712A.2b(a)–(e) are to be used instead of the procedures contained in other provisions of the Juvenile Code when the juvenile is charged with a violation of the Michigan Vehicle Code or an ordinance substantially corresponding to a provision of the Michigan Vehicle Code. These procedures are as follows:

“(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by [MCL 257.728].

“(b) The juvenile’s parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without

\*Note that some “traffic offenses” are contained in Michigan’s Penal Code. Delinquency procedures apply to those offenses. For more detailed information on juvenile traffic offenses, see Miller, *Juvenile Traffic Benchbook* (MJJ, 1999).

additional service of process or delay. However, the court may extend the time for that appearance.

“(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under [MCL 712A.18].

“(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with [MCL 257.732].

“(e) This section does not limit the court’s discretion to restrict the driving privileges of a juvenile as a term or condition of probation.”

Several procedural protections afforded by the Juvenile Code to juveniles charged with offenses not contained in the Michigan Vehicle Code are omitted from the procedures listed above. For example, no provision is made for the appointment of counsel as required by MCL 712A.17c(1)–(3). Formal notice is not required as in MCL 712A.12 and 712A.13 and related court rules. The language of §2b(c) (“If after hearing the case the court finds the accusation to be true”) suggests that a “bench trial” will occur if the juvenile contests the charges, rather than a jury trial. Under MCL 712A.17(2), any “interested person” may demand a jury trial.

The court may place a case involving violation of the Michigan Vehicle Code on the consent calendar if it fulfills certain reporting requirements. *In re Neubeck*, 223 Mich App 568, 573–75 (1997).\*

MCR 3.931(D)(1)–(2) deal with the failure of a juvenile to appear or respond to a citation or appearance ticket alleging a motor vehicle violation. Those provisions state as follows:

“If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court:

(1) must initiate the procedures required by MCL 257.321a for failure to answer a citation, and

(2) may issue an order to apprehend the juvenile after a sworn petition is filed with the court.”

\*See Section 25.15 for discussion of these reporting requirements.



## 2.11 Jurisdiction of Civil Infractions Committed by Juveniles

“‘Civil infraction’ means an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered.” MCL 600.113(1)(a). See also MCL 712A.1(1)(a) (the definition in MCL 600.113 applies to proceedings under the Juvenile Code). MCL 600.113(1)–(2) enumerate the different types of civil infractions.

The Family Division has “exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age” who is charged with violating any municipal ordinance or state or federal law. MCL 712A.2(a)(1). This provision supersedes provisions of the Revised Judicature Act that assign district courts and municipal courts jurisdiction of civil infraction actions, MCL 600.8301(2) and MCL 600.8703(2). On the other hand, provisions of the Michigan Vehicle Code, court rules governing procedure in “juvenile court,” and case law preclude the Family Division from exercising jurisdiction over a juvenile accused of a *traffic* civil infraction. MCL 257.741(5), in the Michigan Vehicle Code, states in part:

“If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court without the necessity of appointment of a guardian or next friend. The courts listed in subsection (2) shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult.”

MCL 257.741(2)(a)–(c) list district and municipal courts as having jurisdiction of civil infractions.

Under MCR 3.903(B)(3), an “offense by a juvenile” includes an act that violates a traffic law. Finally, in *Welch v District Court*, 215 Mich App 253, 256–57 (1996), the Court of Appeals held that the district or municipal court, not the “juvenile court,” has jurisdiction of traffic civil infractions committed by minors.

Jurisdiction of civil infraction actions may be determined by agreement between the Family Division and a district or municipal court. MCL 712A.2(a)(1) states in relevant part that “[i]f the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction as provided in that section.” MCL 712A.2e(1)–(2), in turn, state as follows:

“(1) The court may enter into an agreement with any or all district courts or municipal courts within the court’s geographic jurisdiction to waive jurisdiction over any or all civil infractions alleged to have been committed by

juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction.

“(2) For a civil infraction waived under subsection (1) committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. The court has jurisdiction over juveniles who commit any other civil infraction.”

District court or municipal court judges may also be assigned to sit as Family Division judges to hear matters involving juveniles. MCL 600.1517, MCL 600.225, and MCR 8.110(C)(3)(g).

**Procedure.** However, in those Family Division courts that have jurisdiction of traffic civil infractions pursuant to an agreement under §2e of the Juvenile Code, it is unclear whether the general rules for civil infractions apply, or whether §2b of the Juvenile Code applies. The procedures listed in §2b of the Juvenile Code must be followed when a juvenile is charged with a violation of the Michigan Vehicle Code or a local ordinance substantially corresponding to a provision of the Michigan Vehicle Code. Most traffic civil infractions are contained in the Michigan Vehicle Code or a local ordinance corresponding to a provision of the Michigan Vehicle Code. Thus, it appears that the procedures in §2b of the Juvenile Code govern traffic civil infractions adjudicated in the Family Division pursuant to an agreement under §2e of the Juvenile Code.

## 2.12 Jurisdiction of Contempt Proceedings

**Authority.** The Family Division has “the power to punish for contempt of court under [MCL 600.1701 et seq.] any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce [the Juvenile Code].” MCL 712A.26. See also MCR 3.928(A) (“The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26”). Courts have inherent authority to conduct contempt proceedings. *In re Huff*, 352 Mich 402, 415–16 (1958) (“Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it”), *In re Summerville*, 148 Mich App 334, 339–41 (1986) (the “juvenile court” had inherent authority to initiate contempt proceedings after the juvenile reached age 19 for violation of the court’s dispositional order),\* and *In re GB*, 430 NE2d 1096, 1098–99 (Ill, 1981) (violation of “family court’s” order could be punished pursuant to its inherent contempt power rather than pursuant to the authority granted by the statutes governing juvenile proceedings). Although courts have inherent

\*See also SCAO Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved.

authority to punish for contempt, the legislature has authority to prescribe penalties for such contempt. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966) and *In re Baker*, 376 NE 2d 1005, 1006-07 (Ill, 1978) (legislature may provide alternative enforcement provisions in contempt cases involving minors).

**Procedure.** MCR 3.928(B) sets forth the procedural rules applicable to contempt proceedings in cases under the Juvenile Code:

“(B) **Procedure.** Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982–3.989 govern proceedings against a minor for contempt of a minor personal protection order.”\*

**Penalties for contempt by a juvenile.** MCR 3.928(C) sets forth the penalties for contempt of court committed by a juvenile. That rule states:

“(C) **Contempt by Juvenile.** A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.”

**Parent’s failure to attend dispositional hearing.** A provision of the Juvenile Code, MCL 712A.6a, requires the parent or guardian of a juvenile who is within the court’s jurisdiction under MCL 712A.2(a)(1) (criminal offenses) to attend all hearings unless excused for good cause. Thus, under MCL 712A.6a, parents may be required to attend dispositional and review hearings.\* MCL 712A.6a adds that “[a] parent or guardian who fails to attend the juvenile’s hearing without good cause may be held in contempt and subject to fines. Failure of a parent or guardian to attend a hearing is not grounds for an adjournment, continuance, or other delay of the proceeding and does not provide a basis for appellate or other relief.” MCL 600.1715 allows for a fine of not more than \$250.00.

The Family Division may also enforce its reimbursement orders, MCL 712A.18(2) and (3), and orders assessing attorney costs, MCL 712A.17c(8), MCL 712A.18(5), and MCR 3.915(E), through its contempt powers. See, generally, *In re Reiswitz*, 236 Mich App 158, 172 (1999).

\*For a detailed discussion of procedural requirements in contempt cases, see *Contempt of Court Benchbook—Revised Edition* (MJJ, 2000). See Chapter 15 for discussion of minor personal protection orders.

\*See Section 2.1, above, for discussion of the difference between subject matter jurisdiction and jurisdiction over the juvenile.

## 2.13 Jurisdiction and Authority Over Adults

MCL 712A.6 states as follows:

“The court has jurisdiction over adults as provided in [the Juvenile Code] and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

The authority to fashion remedies under MCL 712A.6 extends beyond MCL 712A.18, which provides dispositional alternatives for juveniles found to be within the court’s jurisdiction. *In re Macomber*, 436 Mich 386, 389–93, 398–400 (1990).

An order directed to a parent shall not be binding unless the parent has been given an opportunity for a hearing pursuant to the issuance of a summons or notice as provided in MCL 712A.12 and MCL 712A.13. MCL 712A.18(4). The order, bearing the seal of the court, must be served on the parent or other person as required by MCL 712A.13. MCL 712A.18(4).

## **2.14 Transfer of Jurisdiction to Family Division Because Offender Was Under 17 at Time of Offense**

MCL 764.27 provides for the transfer of a pending criminal case to the Family Division when it is discovered that the accused is under 17 years of age. If an alleged criminal offense was committed prior to the juvenile’s 17th birthday but a complaint is not filed until after the juvenile’s 17th birthday, the issue arises as to which court has jurisdiction. MCL 712A.3 addresses that issue by providing that proper jurisdiction is determined by the age of the accused at the time of the offense. That statute states as follows:

“(1) If during the pendency of a criminal charge against a person in any other court it is ascertained that the person was under the age of 17 at the time of the commission of the offense, the other court shall transfer the case without delay, together with all the papers, documents, and testimony connected with that case, to the family division of the circuit court of the county in which the other court is situated or in which the person resides.

“(2) The court making the transfer shall order the child to be taken promptly to the place of detention designated by the family division of the circuit court or to that court itself or release the juvenile in the custody of some suitable person to appear before the court at a time designated. The court shall hear and dispose of the case in the same manner as if it had been originally instituted in that court.”

Thus, if a juvenile is under 17 years of age when the offense is committed but 17 years of age when charged with the offense, the court of general criminal jurisdiction must transfer the case to the Family Division. MCL 712A.5 states that the Family Division “does not have jurisdiction over a juvenile after he or she attains the age of 18 years, except as provided in [MCL 712A.2a],” which governs continuing jurisdiction.\* Where the juvenile is under age 17 at the time of the offense but 18 years old or older at the time of being charged, the Court of Appeals has held that the “juvenile court” has jurisdiction for the limited purpose of holding a waiver hearing pursuant to MCL 712A.4. If the Family Division declines to waive its jurisdiction, the case must be dismissed. *People v Schneider*, 119 Mich App 480, 484–87 (1982), and *People v Kincaid*, 136 Mich App 209, 213 (1984).

\*See Section 14.1 for a discussion of continuing jurisdiction over a juvenile.

## 2.15 Transfer of Jurisdiction in Delinquency Cases From County Where Offense Occurred to County Where Juvenile Resides

Hearings on “traditional” waivers and prosecutions of designated cases must occur in the Family Division of the county in which the offense occurred. MCL 712A.4(1), MCL 712A.2(d), and MCR 3.926(G). In juvenile delinquency cases, if any juvenile is brought before the Family Division in a county other than the county in which he or she resides, the court may, before a hearing and with the consent of the Family Division judge of the juvenile’s county of residence, enter an order transferring jurisdiction over the matter to the court of the county of residence.\* MCL 712A.2(d) adds that if the juvenile’s county of residence is a “county juvenile agency” and satisfactory proof of residency is furnished to the court in that county, consent to transfer the case is not required. In all cases, the order and a certified copy of the record of any proceedings in the case must be transferred to the court of the county or circuit of residence without charge. MCL 712A.2(d), MCR 3.926(F). MCR 3.926(B) adds that transfer must occur before trial.

\*See SCAO Form JC 29.

**Criteria to determine county of residence.** MCR 3.926(B)(1)–(3) contain criteria to determine a juvenile’s county of residence. These rules state as follows:

“(1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child’s sole legal parent, that county will be presumed to be the county of residence.

“(2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child’s county of residence:

- (a) The county of residence of the parent or parents, guardian, or legal custodian.
- (b) Whether the child has ever lived in the county, and, if so, for how long.
- (c) Whether either parent has moved to another county since the inception of the case.
- (d) Whether the child is subject to the prior continuing jurisdiction of another court.
- (e) Whether a court has entered an order placing the child in the county for the purpose of adoption.
- (f) Whether the child has expressed an intention to reside in the county.
- (g) Any other factor the court considers relevant.

“(3) If the child has been placed in a county by court order, or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for purposes of adoption.”

“‘Legal Custodian’ means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.” MCR 3.903(A)(13).

**Bifurcated proceedings.** In addition to transfer of a case before adjudication, MCR 3.926(E) provides for bifurcated proceedings, with adjudication occurring in one court and disposition occurring in another court. That rule states as follows:

“If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.”

In bifurcated cases, the court that enters an order of adjudication must send “any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case.” MCR 3.926(F).

**Costs.** MCR 3.926(C) provides that when disposition is ordered by a Family Division other than the Family Division in a county where the juvenile resides, the court ordering disposition is responsible for any costs incurred in connection with the order unless:

- the court in the county where the juvenile resides agrees to pay such dispositional costs, or
- the juvenile is made a public ward and the county of residence withholds consent to transfer of the case.

## **2.16 Transfer of Designated Cases After Trial for Entry of a Juvenile Disposition**

Except when there is a change of venue, designated cases must be tried in the county where the offense occurred. MCR 3.926(G).

Following conviction, however, the court that tried the case may transfer the case to the juvenile's county of residence for entry of a juvenile disposition. If the juvenile is sentenced as an adult, imposition of the sentence (including delayed imposition of sentence) must be done in the county where the offense occurred. MCR 3.926(G) and MCL 712A.2(d).\*

\*See Section 19.1 (court's options following conviction in designated cases).

MCR 3.926(C) provides that when disposition is ordered by a Family Division other than the Family Division in a county where the juvenile resides, the court ordering disposition is responsible for any costs incurred in connection with the order unless:

- the court in the county where the juvenile resides agrees to pay such dispositional costs, or
- the juvenile is made a public ward and the county of residence withholds consent to transfer of the case.

## **2.17 Transfer of Jurisdiction in Status Offense and “Wayward Minor” Cases Involving Indian Children**

MCR 3.935(B)(5) states that if the juvenile is charged as a status offender or a wayward minor, at a preliminary hearing “the court must inquire if the juvenile or a parent is a member of any American Indian tribe or band. If the juvenile is a member, or if a parent is a tribal members and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe or band and follow the procedures set forth in MCR 3.980.”

\*See Sections 3.3(G) (emergency removal from home) and 5.15 (placement) for other requirements.

MCR 3.980 helps to implement the Indian Child Welfare Act (ICWA), 25 USC 1901 et seq. This federal act mandates that state courts adhere to certain minimum procedural requirements before removing Indian children from their homes. 25 USC 1902.\*

### A. Determining the Applicability of the Indian Child Welfare Act and MCR 3.980 in a Specific Case

If an “Indian child,” as defined in the Indian Child Welfare Act, is charged with a status offense or with being a “wayward minor,” the procedures in ICWA and MCR 3.980 must be used. MCR 3.980(A). “Indian child” is defined in 25 USC 1903(4) as any unmarried person who is under age 18 and is either a member of an Indian tribe or eligible for membership and is the biological child of a member of an Indian tribe. The tribe’s determination of its membership is conclusive. *Santa Clara Pueblo v Martinez*, 436 US 49 (1978).

Tribes set their own eligibility requirements, and there is no specific degree of Indian ancestry that qualifies a child for tribal membership. In *In re Elliott*, 218 Mich App 196, 201–06 (1996), the Court of Appeals held that a Michigan court may not make an independent determination as to whether the child is being removed from an “existing Indian family” in deciding whether ICWA applies. The trial court ruled that the issue of the child’s membership or eligibility for membership in an Indian tribe need not be addressed since Native American culture was not a “consistent component” of the child’s or mother’s life. *Id.* at 200. The Court of Appeals reversed, holding that a judicially created “existing Indian family” exception to ICWA violated the plain terms of the federal statute and failed to adequately protect the interests of the Indian tribes in involuntary custody proceedings. *Id.* at 204–06. See also *In re Shawboose*, 175 Mich App 637, 639–40 (1989) (ICWA was inapplicable because respondent was not enrolled as a member of any tribe, and all tribes contacted declined to intervene).

### B. Tribal Notification Requirements

MCR 3.935(B)(5) states that if the juvenile is charged as a status offender or a wayward minor, at a preliminary hearing “the court must inquire if the juvenile or a parent is a member of any American Indian tribe or band. If the juvenile is a member, or if a parent is a tribal members and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe or band and follow the procedures set forth in MCR 3.980.” This requirement supersedes 25 USC 1912(a), which states that a court must know or have reason to know that an Indian child is involved in the proceeding before the notice requirements are applicable. See 25 USC 1921 (when applicable state law contains higher standards than ICWA, a court must apply those higher standards) and *In re Elliott*, 218 Mich App 196, 208–09 (1996).



In *In re IEM*, 233 Mich App 438, 444–47 (1999), at a preliminary hearing in a child protective proceeding, the referee received inconclusive answers from the respondent-mother to his questions concerning respondent’s tribal membership. The referee then ordered the FIA to investigate the matter. On appeal, the respondent argued that the FIA failed to satisfy the notice requirements of ICWA and state law, and the Court of Appeals agreed. Respondent’s answers, though inconclusive, were sufficient to require the court to ensure that FIA provided proper notice. The FIA merely sent a request for a determination of the child’s Indian heritage to the Michigan Indian Child Welfare Agency and called one local tribe. The Court of Appeals noted the importance of the notice requirement in making a definitive determination of tribal membership. Only after the petitioner has complied with the notice requirements and no tribal membership has been established does the burden shift to the respondent to show that ICWA applies.

### **C. Mandatory Transfer of Case to Tribal Court**

If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter must be transferred to the tribal court having jurisdiction. MCR 3.980(A)(1) and 25 USC 1911(a). Indian tribes have exclusive jurisdiction over proceedings involving an Indian child who resides or is domiciled within the reservation of the tribe. 25 USC 1911(a) and *Mississippi Band of Choctaw Indians v Holyfield*, 490 US 30, 43–53 (1989) (discussion of meaning of term “domicile” as used in ICWA).

If the child is a ward of a tribal court, the tribal court retains exclusive jurisdiction over the child notwithstanding the residence or domicile of the child. 25 USC 1911(a).

### **D. Notice of Proceedings to Parent and Tribe or Secretary of Interior**

If the child does not reside on a reservation, the court must ensure that the petitioner has given notice\* of the proceedings to the child’s tribe and the child’s parent or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior. MCR 3.980(A)(2) and 25 USC 1912(a). The required notice must be by registered mail with return receipt requested. 25 USC 1912(a).

\*See SCAO  
Form JC 48.

### **E. Non-Mandatory Transfer of Case to Tribal Court**

If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court must transfer the case to the tribal court unless either parent objects or the court finds good cause not to transfer the case to tribal court jurisdiction. MCR 3.980(A)(3) and 25 USC 1911(b). The perceived adequacy of the tribal court or tribal services shall not be good cause to refuse to transfer the case. MCR 3.980(A)(3).

The legislative history of ICWA suggests that the state court is the appropriate forum only when witnesses who will ensure protection of the rights of the child as an Indian, the rights of the parent as an Indian, and the rights of the tribe are more readily available than they would be in a tribal court proceeding. See HR Rep No 95-1386, at p 21, 95th Cong, 2d Sess, reprinted in 1978 US Code Cong & Ad News 7543–44.

## **2.18 Venue and Change of Venue in Delinquency Cases**

In delinquency cases, venue is proper where the offense occurred or where the juvenile is physically present at the time a petition is filed. MCL 712A.2(a) and (d), and MCR 3.926(A).

MCR 3.926(D) states that venue may be changed upon motion of a party, and that all costs of the proceeding are to be borne by the Family Division that ordered the change of venue. Under MCR 3.926(D)(1)–(2), there are two circumstances allowing for change of venue:

“(1) for the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or

“(2) when an impartial trial cannot be had where the case is pending.

“All costs of the proceeding in another county are to be borne by the court ordering the change of venue.”

As in a case that is transferred, the court ordering a change of venue shall send the original or certified copies of the record of the case to the receiving court without charge. MCR 3.926(F).

## **2.19 Procedures for Handling Cases When Juvenile Is Subject to Prior or Continuing Jurisdiction of Another Court in Michigan**

\*See SCAO  
Form MC 28.

Where a child is subject to a prior or continuing order of any other court of this state, notice must be filed in such other court of any order subsequently entered under the Juvenile Code. MCL 712A.3a.\* Notice must also be served, personally or by registered-mail service, on the parents, guardians, or person in loco parentis and to the prosecuting attorney of the county where the other court is located. Such notices shall not disclose any allegations or findings of fact set forth in petitions or orders, or the actual person or institution to whom custody is changed. *Id.*

MCR 3.927 provides that the manner of notice to the other court and the authority of the Family Division to proceed are governed by MCR 3.205. A

waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court. MCR 3.205(A). See, generally, *In re Brown*, 171 Mich App 674, 676–77 (1988) (where custody of respondent’s children was previously awarded to respondent in a divorce proceeding, the Probate Court did not err in taking jurisdiction over respondent’s children, after giving the required notice to the Circuit Court, on grounds that their home was unfit), *In re DeBaja*, 191 Mich App 281, 288–91 (1991), and *In re Foster*, 226 Mich App 348, 353–57 (1997). The plaintiff or other initiating party must mail written notice of proceedings to:

- (a) the clerk or register in the prior court, and
- (b) the appropriate official of the prior court.

MCR 3.205(B)(2)(a)–(b).

The “appropriate official” means the friend of the court, juvenile officer, or prosecuting attorney, depending on the type of proceeding. MCR 3.205(B)(1).

**Note:** Although MCR 3.205(B) states that the plaintiff or other initiating party must mail the required notice, as a practical matter, the court often sends the notice. See Form MC 28. See also MCR 3.702(D)(2), which requires a *court* that is considering issuing a minor PPO to comply with MCR 3.205.

The notice must be mailed at least 21 days before the date set for hearing, except that if the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known. MCR 3.205(B)(3). The notice requirement is not jurisdictional and does not preclude the subsequent court from entering interim orders before the 21-day period ends if it is in the best interests of the minor. MCR 3.205(B)(4). See also *Krajewski v Krajewski*, 420 Mich 729, 734 (1984) (subsequent court may enter temporary or permanent orders).

Upon receipt of notice, the appropriate official of the prior court:

- (a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and
- (b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.

MCR 3.205(D)(1)(a)–(b).

Upon request of the prior court, the appropriate official of the subsequent court:

- (a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and

(b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.

MCR 3.205(D)(2)(a)–(b).

Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order. MCR 3.205(C)(1). A subsequent order must give due consideration to prior continuing orders of other courts, and a court may not enter orders contrary to or inconsistent with such orders, except as provided by law. MCR 3.205(C)(2).

## 2.20 Procedures for Handling Cases Under the Interstate Compact on Juveniles

\*All 50 states are parties to the ICOJ. See the Historical and Statutory Notes to MCL 3.701 for citations to relevant legislation of other states.

The Interstate Compact on Juveniles (ICOJ), MCL 3.701 et seq., allows for interstate placement and probation and parole supervision of juveniles; the return of runaways, absconders, and escapees to Michigan and other states; and the “extradition” of juveniles to and from Michigan to face criminal charges.\* In Michigan, all requests for services in cases involving other states must be made to the Family Independence Agency, Office of Children’s Services, Interstate Services Unit. See *FIA Services Manual*, CFF 931. Court involvement in the return of runaways, absconders, and escapees to the requesting state, and in the “extradition” of juveniles to states in which a juvenile has allegedly committed a criminal offense is discussed in this section. Placement and supervision of juveniles in other states is discussed in Section 10.9(G).

The Family Division has jurisdiction of a case under the ICOJ. MCL 3.704. However, pursuant to MCL 3.704, the ICOJ does not apply in the following cases:

- when there is an action pending in Michigan for divorce or separate maintenance and the child is in the custody of a parent in another state;
- where the parents are divorced and there is a custody order issued by the circuit court that granted the divorce; or
- where the individual sought to be returned to Michigan is 18 years of age or older.

If a juvenile is returned to Michigan under the ICOJ, Michigan “is responsible for payment of the transportation costs of such return.” MCL 3.701, Article IV(b) and V(b).

## **A. Procedures for the Involuntary Return of Runaways, Absconders, and Escapees**

### **1. Runaways Who Are Not Otherwise Subject to Court Proceedings**

If a juvenile who is not under the jurisdiction of the Family Division has run away without the consent of a parent, guardian, person, or agency entitled to legal custody of the juvenile, that person or agency may petition the Family Division for the issuance of a requisition for the juvenile's return. MCL 3.701, Article IV(a). The petition must include, if known, the location of the juvenile. Other petition and hearing requirements for such cases are contained in MCL 3.701, Article IV(a).

### **2. Taking a Runaway, Absconder, or Escapee Into Custody Without a Requisition**

Any juvenile may be taken into custody without a requisition “[u]pon reasonable information that [he or she] has run away from another state [that is a party to the ICOJ] without the consent of a parent, guardian, person or agency entitled to his legal custody.” MCL 3.701, Article IV(a). MCL 3.701, Article V(a) contains a substantially similar provision for absconders and escapees. The juvenile must be brought “forthwith” before a judge of the appropriate court, who may appoint counsel. The judge must “determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state . . . pursuant to a requisition for his return . . . .” MCL 3.701, Article IV(a). MCL 3.701, Article V(a) contains a substantially similar provision for absconders and escapees.

### **3. Issuing a Requisition for the Return of a Runaway When Court Proceedings Are Pending**

If “a proceeding for the adjudication of the juvenile” is pending in a court when the juvenile runs away, that court may issue a requisition for the juvenile's return on its own motion. MCL 3.701, Article IV(a) sets forth the requirements for issuing a requisition:

“In the event that a proceeding for the adjudication of the juvenile as a delinquent . . . is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the

compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court.”

“Proceeding for the adjudication of the juvenile as a delinquent” means a proceeding under MCL 712A.2, “following the authorization of the filing of a petition by the court.” A copy of the requisition must be filed with the compact administrator in Michigan. MCL 3.701, Article IV(a).

#### **4. Issuing a Requisition for the Return of an Absconder or Escapee**

\*See Section 11.1 for definition of the term “county juvenile agency.”

MCL 3.701, Article V, deals with the return of juveniles who have been adjudicated delinquent and who have absconded from probation or parole or escaped from an institution or residential care facility. At the time the ICOJ is invoked, a juvenile must be subject to the jurisdiction of the court that adjudicated the juvenile or to the jurisdiction or supervision of an agency or institution pursuant to an order of that court. MCL 3.701, Article III. In Michigan, a juvenile must have been found to come under the Family Division’s jurisdiction over criminal offenses, status offenses, and wayward minors. MCL 3.704. “[P]robation or parole” means any kind of conditional release of juveniles authorized under the laws of the states [that are parties to the ICOJ]. MCL 3.701, Article III. In Michigan, “parole” means the conditional release of juveniles who were committed to the FIA as public wards. See *FIA Services Manual*, CFF 931. “Parole” may also mean the conditional release of juveniles committed to the “county juvenile agency” in Wayne County.\*

“[T]he appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped” may present a written requisition to the appropriate court or executive agency of the state where the juvenile is allegedly located. MCL 3.701, Article V(a). The requirements for the requisition are as follows:

“Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the

requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court.” *Id.*

## **5. Taking a Juvenile Into Custody Pursuant to a Requisition**

When a court receives a requisition for the return of a juvenile who has run away, absconded, or escaped, that court must issue an order to take the juvenile into custody and detain him or her. MCL 3.701, Article IV(a) and V(a). After being taken into custody, a juvenile “shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him.” MCL 3.701, Article IV(a). MCL 3.701, Article V(a) contains a substantially similar provision. If the judge finds that the requisition is “in order,” the judge may order the juvenile delivered to the authorities from the requesting state. MCL 3.701, Article IV(a) and V(a). “The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.” MCL 3.701, Article IV(a). MCL 3.701, Article V(a) contains a substantially similar provision.

If a court seeks the return of a juvenile who has run away, absconded, or escaped but who is subject to delinquency or criminal proceedings in the state where he is found, that court must await the outcome of the proceedings in the other state. MCL 3.701, Article IV(a), dealing with runaways, states in relevant part:

“If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other forms of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency.”

MCL 3.701, Article V(a), dealing with absconders and escapees, contains a substantially similar provision.

## **B. Voluntary Consent to Return to Home State**

A juvenile who has run away, absconded, escaped, or committed a criminal offense in another state and who is taken into custody without a requisition may consent to be returned to the state from which he or she ran away, absconded, or escaped, or in which he or she committed a criminal offense. The consent must be given by the juvenile and his or her attorney or guardian ad litem, if any, in a writing made or executed in the presence of a

judge, who must inform the juvenile of his or her rights under the ICOJ. MCL 3.701, Article VI.

### C. **Mandatory Authorization of Return to Juvenile’s Home State**

If a “minor” is brought before a court of a state other than a state in which the minor resides, and if the court of that state is willing to permit the return of the juvenile to his or her home state, the juvenile’s home state may be required to authorize the juvenile’s return. MCL 3.701, Article XVI(b) states as follows:

“When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child’s return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.”

\*See Section 14.1 for a discussion of continuing jurisdiction.

A “minor” is defined by reference to the law in the juvenile’s home state. MCL 3.701, Article XVI(a). MCR 3.903(A)(5) defines a minor as “a person under the age of 18, and may include a person of age 18 or older over whom the juvenile court has continuing jurisdiction pursuant to MCL 712A.2 . . . .”\*

For purposes of MCL 3.701, Article XVI(b), “residence” means “a place at which a home or regular place of abode is maintained.” MCL 3.701, Article III.

### D. **“Extradition” of Juveniles Charged With Criminal Offenses**

\*See Section 2.20(A)–(B), above.

A provision of the ICOJ may require the return of juveniles alleged to have committed a criminal offense in another state to that state. In such cases, the requisition and hearing procedures for the voluntary or involuntary return of absconders and escapees apply. MCL 3.701, Article XVI(c).\* This statutory provision states as follows:

“All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent



juvenile for the violation of any criminal law. Any juvenile charged with being a delinquent juvenile for violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in the case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition in Article V of the compact shall be forwarded by the judge of the county in which the petition has been filed.”